



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 27, 1996

Merri Schneider-Vogel  
Bracewell & Patterson, L.L.P.  
South Tower Pennzoil Place  
711 Louisiana Street, Suite 2900  
Houston, Texas 77002-2781

OR96-0424

Dear Ms. Schneider-Vogel:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38354.

North Harris Montgomery Community College (the "college") received the following request for information:

Please provide copies of North Harris County College Instructor Grade Summaries, Official Attendance Lists, documents and other tangible things which list the names of all students enrolled and/or receiving a grade in all classes taught by Harris M. O'Brien during the period from Fall Semester 1989 through Fall Semester 1995. If prior permission of the students has not been previously been obtained by the school to release grades, phone numbers, gender information and any other information contained in these lists, blot out all information that cannot be released and submit the copies with the students' names.

You supplied to this office for review de-identified sample class rosters and grade reporting forms.<sup>1</sup> You assert that the information at issue includes "education records of students" made confidential under the Family Educational Rights and Privacy Act ("FERPA"), title 20 of the United States Code, section 1232g. You also assert that the

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information at issue may be withheld from disclosure pursuant to section 552.103(a) of the Government Code.

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. However, "directory information" is not subject to the FERPA confidentiality provisions. *Id.* § 1232g(b)(1). The names of students enrolled in classes appears to be directory information and thus is not confidential under FERPA. *Id.* § 1232g(a)(5)(A) (defining "directory information"); Open Records Decision No. 242 (1980).

Since the requestor is specifically seeking the names of students, we think that the class rosters may be the only documents submitted to this office that are actually responsive to the request. However, since you also submitted to this office a sample de-identified grade reporting form as well, we will address both the rosters and the de-identified grade reporting forms. We note that information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978).<sup>2</sup> Since the records at issue are class rosters and de-identified grade reporting forms, neither of which are confidential under FERPA, we will address your section 552.103(a) claims in regard to these documents.

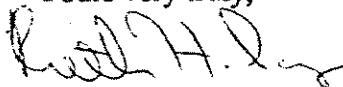
Section 552.103(a) provides an exception for information that relates to litigation "to which the state or a political subdivision is or may be a party." Gov't Code § 552.103(a)(1). To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information "relates" to pending or reasonably anticipated litigation. Open Records Decision No. 551 (1990) at 4. You have supplied a petition showing that Harris O'Brien, the professor who taught these classes, has been sued for libel. According to the petition, he has been sued in both his individual capacity and in his official capacity as head of the college's business division. However, you have not explained how Mr. O'Brien's class rosters and de-identified grade reporting forms are related to the subject of the pending lawsuit. Thus, the information at issue may not be withheld from disclosure pursuant to section 552.103(a).

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<sup>2</sup>But see 20 U.S.C. § 1232g(a)(1)(A), (d) (parent or adult student has affirmative right of access to that student's education records). See also Open Records Decision No. 431 (1985) (Open Records Act's exceptions to required public disclosure do not authorize withholding of "education records" from adult student).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 38354

Enclosures: Open Records Decision No. 634 (1995)  
Submitted documents

cc: Mr. R. James Koester  
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(w/enclosures- Open Records Decision No. 634 (1995))